

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, et al.,

Plaintiffs,

V.

GREG ABBOTT, et al.,

Defendants.

CIVIL ACTION NO.
21-CV-00259-DCG-JES-JVB
[lead case]

TREY MARTINEZ FISCHER, Texas State Representative (HD 116),

Plaintiff,

V.

GREG ABBOTT, in his official capacity as Governor of the State of Texas; JOHN SCOTT, in his official capacity as Secretary of the State of Texas,

Defendants.

CIVIL ACTION NO.
3:21-CV-00306
[consolidated case]

PLAINTIFF TREY MARTINEZ FISCHER'S UNOPPOSED MOTION FOR LEAVE
TO FILE HIS SECOND AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF

Plaintiff Martinez Fischer seeks leave to file an amended complaint in the above-styled cause in response to this Court's Order issued July 25, 2022. *See* Dkt. 468.

Rule 15 provides that "a party may amend its pleading [with] the court's leave" and that "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Plaintiff moves to file the Second Amended Complaint within the time permitted by this Court's order. Allowing Plaintiff to file the Second Amended Complaint would serve justice and promote judicial efficiency. Further, there would be no substantial or undue prejudice, bad faith, undue delay, or futility. Through the Second Amended Complaint, Plaintiff seeks clarify his complaint and respond to the Court's order.

The U.S. Supreme Court determined that "[i]n the absence of . . . undue delay, bad faith or dilatory motive . . . undue prejudice . . . futility of amendment, etc.--the leave sought should . . . be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962). A district court may only deny leave to amend "for undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility of a proposed amendment." *Simmons v. Sabine River Auth. Louisiana*, 732 F.3d 469, 478 (5th Cir. 2013) (quotation omitted). None of these factors exists here.

The facts described in the Second Amended Complaint are well-known to Defendants as they are largely formulated from public statements or public documents in the control of the Defendants or their agents. Though Discovery has ended in this cause, the Second Amended Complaint does not seek to add parties nor causes of actions that have not previously been pled. Thus, there is no prejudice or bad faith on behalf of any party.

There have not been repeated failures (only one failure), as yet, on the part of the plaintiff to cure deficiencies. In fact, this Second Amended Complaint is brought in the hopes of ending duplicative dilatory pleading by the Defendants. The Amendment is not clearly futile as the plaintiff has averred facts that, if proven, would redress his injuries.

The Plaintiff has contacted the Defendants on their position on the motion. The Defendants are unopposed so long as plaintiff limits his amendment in response to the Court Order.

DATED: August 1, 2022

Respectfully submitted,

/s/ Martin Golando
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CERTIFICATE OF SERVICE

I certify that on this, the 1st day of August, 2022 in accordance with the Federal Rules of Civil Procedure, a true and correct copy of the foregoing document was served, via ECF, to the counsel of record in this cause of action.

/s/ Martin Golando
Martin Golando

CERTIFICATE OF CONFERENCE

I certify that I have conferred, or made a reasonable attempt to confer, with the defendants about the merits of this motion. The Defendants do not oppose the motion so long as Plaintiff limits his Amendment to responding to the Court Order.

/s/ Martin Golando
Martin Golando